

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Access and Fairness Advisory Committee
Hon. Ken M. Kawaichi, Chair
Donna Clay-Conti, Committee Counsel, 415-865-7911,
donna.clay-conti@jud.ca.gov

DATE: October 21, 2003

SUBJECT: Examination of Prospective Jurors (amend Cal. Stds. Jud. Admin.,
§§ 8, 8.5; revise form MC-001) (Action Required)

Issue Statement

Voir dire examination is the process by which the court and counsel select a fair and impartial jury. In voir dire, prospective jurors are questioned to determine whether there is a ground to challenge any of them for cause. (7 Witkin, Cal. Procedure (4th ed.) Trial § 150, p. 170.) The advisory committee's consensus is that the current query about marital status does not inform the court and the lawyers of the full range of influence from significant personal relationships that may impact a juror's opinion. The existing language fails to recognize the existence of domestic partnerships and committed same-sex couples.

Recommendation

The Access and Fairness Advisory Committee recommends that the Judicial Council, effective January 1, 2004, amend sections 8 and 8.5 of the California Standards of Judicial Administration and revise form MC-001 (*Juror Questionnaire for Civil Cases*) to improve the voir dire process and to address issues of domestic partnership and sexual orientation that may arise during voir dire.

The text of the amended sections is attached at pages 6–13. The text of the revised form is attached at pages 14–21.

Rationale for Recommendation

The proposed amendments to sections 8 and 8.5 of the California Standards of Judicial Administration and corresponding revisions to MC-001 would not only achieve the goal of voir dire by eliciting complete information from all jurors but would also alleviate any perception of bias on the part of the court against gay and lesbian court users.

In 1998 the Access and Fairness Advisory Committee's Sexual Orientation Fairness Subcommittee began developing a survey to examine fairness and sexual orientation in the California courts—the first survey of its kind in the country. The survey was conducted in recognition of the need to ensure fairness for gay men and lesbians who are involved with California's court system as judges, attorneys, court users, and court employees. The subcommittee presented its final report, *Sexual Orientation Fairness in the California Courts*, containing the survey findings and the subcommittee's recommendations to the Judicial Council, in January 2001. At that time, the council unanimously accepted the report and its 21 recommendations. One recommendation was that "[t]he advisory committee, in conjunction with other appropriate organizations, will develop sample questions for voir dire that appropriately address the issues of domestic partnership and sexual orientation." The proposed amendments to sections 8 and 8.5 and revisions to form MC-001 provide suggested voir dire questions that address these concerns.

The question about marital status in sections 8 and 8.5 of the California Standards of Judicial Administration reinforce an assumption that individuals are either "married" in the traditional heterosexual sense or "single." A prospective juror whose life is not described by those categories may feel stigmatized by the jury process, and the question may, unintentionally or intentionally, create the perception of bias. In addition, the marital status question may undermine the credibility of the judicial process in several ways. First, it deprives the court and the lawyers of valuable information about relationships (including heterosexual relationships) that may be needed or could be used to ensure a fair jury selection or court process. Second, it places gay or lesbian jurors in the untenable situation of either disclosing their sexual orientations or answering the question narrowly and specifically in the terms asked, requiring them to give incomplete answers about the reality of their lives. Third, it may create a perception among gay and lesbian court users that their subsequent treatment in the court process may not be fully informed or fair. As one respondent to the survey noted, "All prospective jurors were asked about marital status. I have been in a monogamous relationship 33 years and consider myself married. It would have been wrong to deny my relationship, but it would have been legal to do so."¹

¹ Judicial Council of California, *Sexual Orientation Fairness in the California Courts: Final Report of the Sexual Orientation Fairness Subcommittee of the Judicial Council's Access and Fairness Advisory Committee* (Jan. 2001) p. 30.

Therefore, the committee proposes adding the language “anyone with whom you have a significant personal relationship” to those questions in sections 8(c), 8(d), and 8.5(b) that inquire about matters affecting the juror, any member of his or her family, or any of his or her close friends. These questions are in the category of global inquiries judicial officers may ask of the entire panel of jurors after they are sworn and seated. The addition of this language will ensure that lawyers receive complete information about all significant relationships, including domestic partnerships and committed same-sex and heterosexual relationships, that may affect a prospective juror’s opinion about the case.

In addition, the committee proposes deleting references to “marital status” and “married,” adding “anyone with whom you have a significant personal relationship” to sections 8(c)(20), 8(d)(28) and (29), and 8.5(b)(20), which currently inquire about the occupation and educational background of the prospective juror and his or her spouse. Again, elimination of the terms “married” and “marital status” is intended to alleviate any perceptions of bias on the part of prospective jurors who have domestic partners or other committed relationships, but who are not married in the traditional sense.

The committee also proposes eliminating the phrase “where you live” from this group of questions, specifically 8(c)(20)(i), 8(d)(28)(1), and 8.5(b)(20)(i), because the question does not appear relevant to the issue of whether the prospective juror can be fair and impartial. While the inquiry could reveal whether the prospective juror lives, for example, in or near the area where the incident occurred that is the subject of the case, the committee believes there is an overriding risk that bias against a juror’s neighborhood might be the basis for an unwarranted challenge to an otherwise qualified prospective juror.

Committee members also agree that the current *Juror Questionnaire for Civil Cases* (form MC-001) similarly compels those whose lives do not reflect the “traditional” family unit to provide incomplete (albeit legally correct) responses to marital status questions. Further, these questions may compel disclosure of personal information that may not be relevant to the issues of the case or that the prospective juror may not have otherwise revealed. Portions of the juror questionnaire may inadvertently “out” gay men or lesbians who prefer to keep their sexual orientation private because these questions compel this disclosure for jurors who want to honor the oath they took to answer the questions truthfully. Therefore, the committee proposes eliminating questions 1.2 (about current and past *marital* relationships), 1.9 (about the educational background of current and former spouses), and 1.19 (about the employment of current and former spouses) from form MC-001 because, in addition to possibly disclosing a juror’s sexual

orientation, the responses sought do not realistically yield the information that attorneys and judges are seeking in order to determine a prospective juror's bias or impartiality. Moreover, the information sought in those questions would otherwise be captured in the responses to the proposed questions 1.8 and 1.17 of the questionnaire (questions 1.10 and 1.20, respectively, on the current form) that inquire about the spouse or anyone with whom the juror has a significant personal relationship. Further, question 1.29 (about friends and relatives who are judges, attorneys, etc.) has been rephrased in question 1.26 on the proposed form to be more concise. Lastly, the committee proposes eliminating the term "full-time" in reference to employment in questions 1.16 and 1.17 in recognition of the varying work arrangements that exist in today's society.

The proposed changes to the questionnaire for civil cases are consistent with the proposed amendments to the standards.

Alternative Actions Considered

The committee also considered a proposal for a new rule of court and a repeal of sections 8 and 8.5 of the standards. This alternative was rejected because the committee felt that judicial officers should be given the flexibility to tailor voir dire questions to the circumstances of each case. Promulgating a mandatory court rule would eliminate that flexibility.

Comments From Interested Parties

The proposed amendments were circulated for comment as SPR02-01 during the spring 2002 comment cycle. Eleven comments were received, from judicial officers, attorneys, a member of the State Bar Committee on Sexual Orientation and Gender Identity Discrimination, and court personnel.² After the comment period, members of the Rules and Projects Committee recommended changes that were incorporated into the proposed amendments.

Nine commentators agreed with the proposed amendments and revisions as drafted. Two agreed with the proposed amendments if modified. One of the commentators suggesting modification felt that use of the phrase "anyone with whom you have a significant personal relationship," would, in fact, embarrass prospective gay jurors. He suggested the alternative "adults living in your household." The committee decided not to incorporate this language in sections 8(c)(12)–(18) and 8(d)(1)–(6), (8)–(11), and (22) because it might not produce disclosure of significant relationships if one of the individuals were living elsewhere because of a job, school, or other reasons; nor would it capture past significant relationships (such as former spouses or domestic partners) that might

² A comprehensive chart of comments received, and the committee's responses, accompanies this report at pages 22–24.

also have strongly influenced the opinions or beliefs of the prospective juror. The committee's proposed language is intended to capture those relationships regardless of the current living arrangement. Moreover, another adult living in the household (e.g., roommate or renter) may not necessarily have a relationship with the juror that is so significant that it influences the juror in a manner that is relevant to the case at hand. The committee believes the proposed language creates a greater likelihood that a juror will provide relevant information to the court and the litigants.

The second commentator who proposed modification suggested that the amendments employ the commonly used term "significant other person." He stated that the proposed language is "overly verbose" and that prospective jurors understand what information he is seeking when he uses that phrase. The committee disagrees with this suggestion because in today's society the phrase "significant other person" or "significant other" connotes an intimate relationship and therefore could result in outing a gay or lesbian prospective juror. It could also require *any* prospective juror to disclose an intimate relationship that he or she might otherwise prefer to keep private. Moreover, use of "significant other person" would be contrary to one of the committee's objectives, which is to broaden the category of persons that could influence prospective jurors' opinions that are relevant to the case without invading jurors' privacy.

When circulated for comment, the proposed amendments to from sections 8(c)(18)(20), 8(d)(9)(28)(29), 8.5(20) and (23)(iv) of the standards and portions of the Civil Juror Questionnaire omitted the term "spouse" in favor of "significant personal relationship," the definition of which included "spouse." However, the Rules and Projects Committee felt that "spouse" should not be eliminated because the inclusion of the term was one with which judges and litigants are most familiar and because its inclusion would not prevent the desired outcome, that is, to eliminate bias or the perception of bias toward gay and lesbian court users. "Spouse" was reinserted into the standards and questionnaire and the definition of "significant personal relationship" was modified accordingly.

Implementation Requirements and Costs

There will be minor costs associated with reprinting form MC-001.

Attachments

Sections 8 and 8.5 of the California Standards of Judicial Administration are amended, effective January 1, 2004, to read:

§ 8. Examination of prospective jurors in civil cases

(a) [In general]

(1) ***

(2) When counsel requests to be allowed to conduct a supplemental voir dire examination, the trial judge should permit counsel to conduct such examination without requiring prior submission of the questions to the judge unless a particular counsel has demonstrated unwillingness to avoid the type of examination proscribed in (f) of this section. In exercising his or her sound discretion as to the form and subject matter of voir dire questions, the trial judge should consider, among other criteria: (a) any unique or complex elements, legal or factual, in the case, and (b) the individual responses or conduct of jurors which may evince attitudes inconsistent with suitability to serve as a fair and impartial juror in the particular case. Questions regarding personal relationships of jurors should be relevant to the subject matter of the case.

(b) ***

(c) [Examination of jurors] Except as otherwise provided in (d), the trial judge's examination of prospective jurors should include the following areas of inquiry and any other matters affecting their qualifications to serve as jurors in the case.

(1)–(11) ***

In the following questions I will be using the terms “family,” “close friend,” and “anyone with whom you have a significant personal relationship.” The term, “anyone with whom you have a significant personal relationship” means a domestic partner, life partner, former spouse, or anyone with whom you have an influential or intimate relationship that you would characterize as important.

(12) *(If a corporation or “company” is a party)*

(i) Have ~~any of you,~~ or to your knowledge, any member of your family, ~~or a close friends,~~ or anyone with whom you have a significant personal relationship, ever had any connection with, or any dealings

with, the _____ corporation (or company) ~~to your knowledge?~~

(ii)–(v) ***

(13) Have ~~any of you~~, or to your knowledge, any member of your family, ~~or~~, a close friends ~~to your knowledge~~, or anyone with whom you have a significant personal relationship, ever sued anyone, or presented a claim against anyone, in connection with a matter similar to this case? (If so, did the matter terminate satisfactorily so far as you were concerned?)

(14) Has anyone ever sued ~~any of you~~, or presented a claim against ~~any of you~~, or to your knowledge, against any member of your family, ~~or a~~ close friends, or anyone with whom you have a significant personal relationship, in connection with a matter similar to this case? (If so, did the matter terminate satisfactorily so far as you were concerned?)

(15) Are ~~any of you~~, or to your knowledge, any member of your family, ~~or a~~ close friends, or anyone with whom you have a significant personal relationship ~~to your knowledge~~, presently involved in a lawsuit of any kind?

(16) ***

(17) Have ~~any of you~~, or to your knowledge, any member of your family, ~~or a~~ close friends, or anyone with whom you have a significant personal relationship, had any special training in: (Describe briefly the fields of expertise involved in the case, such as law, medicine, nursing, or any other branch of the healing arts.)

(18) (*In personal injury or wrongful death cases*)

(i)–(ii) ***

(iii) Have ~~any of you~~, or to your knowledge, any member of your family, ~~or a~~ close friends, or anyone with whom you have a significant personal relationship ~~to your knowledge~~, ever engaged in investigating or otherwise acting upon claims for damages?

(iv)–(v) ***

(vi) Are there any of you who do not drive an automobile? (If so, have you ever driven an automobile, and if you have, give your reason for

not presently driving.) ~~If you are married,~~ Does your spouse or anyone with whom you have a significant personal relationship drive an automobile? (If ~~your spouse~~ that person does not drive but did so in the past, why did ~~your spouse~~ they stop?)

(vii) Plaintiff (or cross-complainant) _____ is claiming injuries to his (or her): (Describe briefly the general nature of the alleged injuries.) Do ~~any of you~~, or to your knowledge, does any member of your family, ~~or a close friends~~, or anyone with whom you have a significant personal relationship, to your knowledge, suffer from similar injuries? Have you or they, to your knowledge, suffered from similar injuries in the past? (If so, would that fact affect your point of view in this case to the extent that you might not be able to render a completely fair and impartial verdict?)

(19) ***

(20) Each of you should now state your:

(i) Name, where you live, your marital status (whether married, single, widowed or divorced), the number and ages of your children if any, your occupational history, and the name of your present employer. If you are married, you should also describe briefly your spouse's occupational history and present employer if any.

(ii) Children's ages and the number of children, if any,

(iii) Occupation,

(iv) Occupational history, and

(v) Present employer.

And for your spouse or anyone with whom you have a significant personal relationship, their:

(vi) Names,

(vii) Occupations,

(viii) Occupational histories, and

(ix) Present employers.

Please begin with juror number one.

(21) ***

(d) [Examination of jurors in eminent domain cases] In eminent domain cases, the trial judge's examination of prospective jurors should include the areas of inquiry set forth in (c)(1) through (c)(12), the following areas, and any other matters affecting their qualifications to serve as jurors in the case:

- (1) ~~To your knowledge,~~ Have any of you, or to your knowledge, any member of your family, ~~or a~~ close friends, ~~or anyone with whom you have a significant personal relationship,~~ ever had any connection with, or dealings with, the plaintiff agency? Are ~~any of you or~~ any of them related to any officer or employee of the plaintiff agency?
- (2) ~~To your knowledge,~~ Have any of you, or to your knowledge, any member of your family, ~~or a~~ close friends, ~~or anyone with whom you have a significant personal relationship,~~ ever been involved in an eminent domain proceeding such as this or ~~will likely~~ to become involved in such a proceeding in the future?
- (3) To your knowledge, do you have ~~any~~ relatives, ~~or~~ close friends, or anyone with whom you have a significant personal relationship, who has ~~have been~~ or will be affected by the proposed project or a similar public project? (If so, who and how affected?)
- (4) Have ~~any of you, or~~ to your knowledge, any member of your family, ~~or a~~ close friends, ~~or anyone with whom you have a significant personal relationship,~~ ever sold property to a public agency having the power of eminent domain?
- (5) Are ~~any of you, or~~ to your knowledge, any member of your family, ~~or a~~ close friends, ~~or anyone with whom you have a significant personal relationship to your knowledge,~~ presently involved in a lawsuit of any kind? (If so, does the lawsuit involve a public agency?)
- (6) Have ~~any of you, or~~ to your knowledge, any member of your family, ~~or a~~ close friends ~~to your knowledge,~~ or anyone with whom you have a significant personal relationship to your knowledge, ever been involved in a lawsuit involving a public agency?

(7) ***

(8) Have ~~any of you~~, or to your knowledge, any member of your family, ~~or a close friends, or anyone with whom you have a significant personal relationship~~, had any special training in: (Describe briefly the fields of expertise involved in the case, such as law, real estate, real estate appraising, engineering, surveying, geology, etc.)

(9) Have you, ~~or your spouse~~, or to your knowledge, any member of your family, a close friend, or anyone with whom you have a significant personal relationship, ever been engaged in any phase of the real estate business including:

(i)–(vi) ***

(10) Have you, or to your knowledge, any member of your family, ~~or any a close friend, or anyone with whom you have a significant personal relationship~~, ever studied or engaged in: (State type of business, if any, conducted on subject property.)

(11) Have you, or to your knowledge, any members of your ~~immediate family or, a close friends, or anyone with whom you have a significant personal relationship~~, ever been engaged in any work involving the acquisition of private property for public purposes? Or involving the zoning or planning of property?

(12)–(21) ***

(22) Are you, or to your knowledge, any member of your family, ~~or a close friends, or anyone with whom you have a significant personal relationship~~ to your knowledge, a member of any organization that is opposed to such public projects?

(23)–(27) ***

(28) Each of you should now state your:

(i) ~~Name, where you live, your marital status (whether married, single, widowed or divorced), the number and ages of your children if any, your occupational history, and the name of your present employer. If you are married, you should also describe briefly your spouse's occupational history and present employer if any.~~

(ii) Children's ages and number of children, if any,

(iii) Occupation,

(iv) Occupational history, and

(v) Present employer.

And for your spouse or anyone with whom you have a significant personal relationship, their:

(vi) Names,

(vii) Occupations,

(viii) Occupational histories, and

(ix) Present employers.

Please begin with juror number one.

(29) Each of you should now state whether you, ~~or~~ your spouse, or anyone with whom you have a significant personal relationship owns or has an interest in any real property and, if so, whether its value or use is affected by the public project involved in this case. We will again start with juror number one.

(30) ***

(e)–(f) ***

§ 8.5. Examination of prospective jurors in criminal cases

(a) ***

(b) **[Examination of jurors]** The trial judge's examination of prospective jurors in criminal cases should include the following areas of inquiry and any other matters affecting their qualifications to serve as jurors in the case:

(1)–(12) ***

In the following questions I will be using the terms “family,” “close friend,” and “anyone with whom you have a significant personal relationship.” The term, “anyone with whom you have a significant personal relationship” means a domestic partner, life partner, former spouse, or anyone with whom you have an influential or intimate relationship that you would characterize as important.

- (13) Have ~~any of you, or to your knowledge,~~ any member of your family, ~~or any close friends, or anyone with whom you have a significant personal relationship to your knowledge,~~ ever been arrested for or charged with an offense similar to that in this case?
- (14) Have ~~any of you, or to your knowledge,~~ any member of your family, ~~or any close friends, or anyone with whom you have a significant personal relationship to your knowledge,~~ ever been a complaining witness or a victim in a case of this kind?
- (15) Have ~~any of you, or to your knowledge,~~ any member of your family, ~~or any close friends, or anyone with whom you have a significant personal relationship to your knowledge,~~ had any law enforcement training or experience or been a member of or been employed by any law enforcement agency? By law enforcement agency, I include any police department, sheriff’s office, highway patrol, district attorney’s office, city attorney’s office, attorney general’s office, United States attorney’s office, FBI, etc.?² (If so, elicit the details of the experience or connection.)

(16)–(19) ***

(20) Each of you should now state your:

- (i) Name, where you live, your marital status (whether married, single, widowed or divorced), the number and ages of your children if any, your occupational history, and the name of your present employer. If you are married, you should also describe briefly your spouse’s occupational history and present employer if any.
- (ii) Children’s ages and the number of children, if any,
- (iii) Occupation,
- (iv) Occupational history, and
- (v) Present employer.

And for your spouse or anyone with whom you have a significant personal relationship, their:

(vi) Names,

(vii) Occupations,

(viii) Occupational histories, and

(ix) Present employers.

Please begin with juror number one.

(21)–(22) ***

(23) (When a new prospective juror is seated, the court should ask (him)/(her)):

(i)–(iii) ***

(iv) Give us the personal information requested concerning your occupation, that of your spouse or anyone with whom you have a significant personal relationship, and your prior jury experience.

(Thereupon, as to each new juror seated, the court should ask counsel whether it has adequately covered the proper subjects of inquiry, ask such additional questions as the court determines are proper, and permit counsel, upon a showing of good cause, to ask supplemental questions, and proceed with challenges as above.)

(c) ***

Comments for SPR02-01
Examination of Prospective Jurors in Civil and Criminal Cases

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Mr. Robert Doyle State Bar of California's Committee on Sexual Orientation and Gender	A	N	The Committee on Sexual Orientation and Gender Identity Discrimination (CSOGID) supports this proposal because it will enable all jurors (including members of unmarried heterosexual couples, as well as jurors with same-sex partners) to feel included and respected during voir dire and to answer the questions truthfully without either “outing” themselves or denying the real circumstances of their lives.	No response necessary.
2.	Ms. Sabra L. Forbes Superior Court of Solano County	A	N		No response necessary.
3.	Hon. Laura J. Masunaga Superior Court of Siskiyou County	A	N		No response necessary.
4.	Lori Meseke Judicial Council Liaison Chair San Joaquin County Bar Association	A	N		No response necessary.
5.	Ms. Andrea Nelson Superior Court of Butte County	A	N		No response necessary.
6.	Ms. Cynthia Papsdorf Kelley Drye & Warren LLP	A	N		No response necessary.

Comments for SPR02-01
Examination of Prospective Jurors in Civil and Criminal Cases

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
7.	Hon. Roger D. Randall Superior Court of Kern County	AM	N	<p>Although one of the supposed reasons given for the changes to the wording in oral voir dire is to avoid embarrassing gays, use of the phrase “anyone with whom you have a significant personal relationship” will surely do just that. Better language would refer to “any adults living in your household.”</p> <p>Furthermore, this language will pick up the now frequently encountered adult roommate whose only relationship with the juror is one of friendship, or even of economic convenience.</p>	<p>Disagree. The committee believes this language would not capture those close personal relationships where one of the parties does not reside in the home (e.g. for job-related reasons or because the relationship recently terminated.) These people could still be very influential. Further, “another adult living in the household” could encompass someone (e.g. roommate or renter) that does not necessarily have a relationship with the juror that is significant so as to influence the juror in a manner that is relevant to the case being tried. The Committee believes the proposed language creates a greater likelihood of capturing relevant information. However, the committee did retain the language suggested by this commentator in question 1.8 on form MC-001, the civil juror questionnaire, because that question relates to the education of adults residing in the prospective juror’s home. Limiting the language to “adults” in this question does not appear to create disclosure issues regarding sexual orientation for prospective jurors. These questions seem directed to ascertaining the educational level of those adults in the juror’s immediate surroundings.</p>

Comments for SPR02-01
Examination of Prospective Jurors in Civil and Criminal Cases

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
					Also, as the Committee's proposed language is only suggested, and not mandatory, a judicial officer is free to tailor the language to fit the circumstances presented by the case being heard.
8.	Hon. William C. Ryan Superior Court of Los Angeles County	AM	N	I agree with the proposed changes, but I suggest that in the juror questionnaire, the commonly used understood "significant other person" be used in place of the overly verbose phrase "anyone with whom you have a significant personal relationship." I use significant other in my jury voir dire and the prospective jurors do not appear to have any problem understanding what information I am seeking.	Disagree. The term "significant other" connotes or suggests a special or intimate relationship in today's society, a suggestion that the committee is attempting to avoid. The use of this term risks unintentionally "outing" a prospective juror.
9.	Hon. Harry R. Sheppard Superior Court of Alameda County	A	N		No response necessary.
10.	Ms. Charlene Walker Superior Court of Sacramento County	A	N		No response necessary.
11.	Unknown Superior Court of Ventura County	A	N		No response necessary.